

## **SUPPORTING STATEMENT (Announcement 2004-43)**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 102(b) of the Pension Funding Equity Act of 2004 (the Act) provides certain eligible employers, i.e., those that are (1) a commercial passenger airline, (2) primarily in the production or manufacture of a steel mill product, or the processing of iron ore pellets, or (3) described in section 501(c)(5) of the Code that established a plan on June 30, 1955, to make election to make an alternative deficit reduction contribution.

Announcement 2004-38 implements the aforementioned section 102(b) and provides guidelines by which the Internal Revenue Service may monitor whether defined benefit pension plans are operating within the framework of the law and congressional intent.

In conjunction with section 102(b) of the Act contains parallel provisions under section 302(d)(12) of ERISA. In addition, that section provides that notice of an election must be given within 30 days from the date of the making an election by an employer to make an alternative deficit reduction contribution to plan participants, their beneficiaries, and the Pension Benefit Guaranty Corporation. Consistent with section 101 of Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, the Act provides that the notice of the election will be made in time and manner prescribed by Treasury.

As a result of the enactment of the statute on April 10, 2004, which, generally, is after the time for making the election described in this announcement, a special transition rule for the plan year during calendar 2004 is applicable.

### **2. USE OF DATA**

The data will be used by the Pension Benefit Guaranty Corporation to monitor whether the plan or plans of an employer that make an alternative deficit reduction contribution election provide the proper notice to the Pension Benefit Guaranty Corporation and plan participants and their beneficiaries. This data may be shared with the

Internal Revenue Service and the Employee Benefits Security Administration of the U.S. Department of Labor in the enforcement of the provisions of the Employee Retirement Income Security Act of 1974.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS Publications, regulations, published guidance, e.g., revenue rulings and revenue procedures, notices, letters, and letter rulings are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

**4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

**5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

This announcement follows the congressional directive where employers that elect an alternative deficit reduction contribution must give notice of that election to plan participants and beneficiaries as well as to the Pension Benefit Guaranty Corporation in a time and manner prescribed by the Secretary of the Treasury (or his delegate).

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

The statute requires, in general, that notice must be given within 30 days from the date of an election to make an alternative deficit reduction contribution. Because the statute was enacted on April 10, 2004, a special transition rule is applicable for the plan year that begins during calendar 2004.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

Announcement 2004-43 was published in the **Internal Revenue Bulletin** on May 24, 2004 (2004-21 IRB 955).

In response to the **Federal Register Notice** dated July 19, 2010 (**75 FR 44848**), we received no comments during the comment period regarding Announcement 2004-43.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Submissions under this notice are considered tax returns and tax return information, which are confidential as required by 26 U.S.C. § 6103. In general, certain matters relating to taxability and deductibility are disclosable under 26 U.S.C. § 6110.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section II of the announcement requests that certain information items be given in a notice to plan participants and beneficiaries by employers that elect to make an alternative deficit reduction contribution. This information includes (1) the amount of the required minimum contribution under § 412 of the Code for the plan year for which the alternative deficit reduction contribution election was made (calculated with and without taking into account the election), (2) the due date of the required minimum contribution under § 412 for the plan year for which the alternative deficit reduction contribution election was made, (3) if the electing employer is required to make quarterly contributions to the plan for the plan year for which the election is made, the aggregate amount of the required minimum contribution under § 412 for the plan year that is required to be paid in quarterly installments (calculated taking into account the election), and (4) the benefits eligible for a guarantee as well as the limits on that guarantee. This information must be mailed to each plan participant and beneficiary.

The estimated average annual burden varies from 10 hours to

60 hours with an estimated average burden of 35 hours on 200 respondents for a total of 7,000 hours annually.

Section III of the announcement requests certain information items be given in a notice to the Pension Benefit Guaranty Corporation by employers that elect to make an alternative deficit reduction contribution. This information includes (1) the amount of the required minimum contribution under § 412 of the Code for the plan year for which the alternative deficit reduction contribution election was made (calculated with and without taking into account the election), (2) the due date of the required minimum contribution under § 412 for the plan year for which the alternative deficit reduction contribution election was made, (3) if the electing employer is required to make quarterly contributions to the plan for the plan year for which the election is made, the aggregate amount of the required minimum contribution under § 412 for the plan year that is required to be paid in quarterly installments (calculated taking into account the election), (4) the number of years it will take to restore the plan to full funding if the employer makes only the required contributions; and (5) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer. This information must be mailed to the PBGC.

The estimated average annual burden varies from 10 hours to 40 hours with an estimated average burden of 25 hours on 200 respondents for a total of 5,000 hours annually.

The total estimated average annual burden varies from 20 hours to 100 hours with a total estimated burden of 60 hours on 200 respondents for a total of 12,000 hours annually.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register Notice** dated July 19, 2010, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this

time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the announcement sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.